

General Information Letter: An Illinois resident with sufficient net income to generate an income tax liability is required to file a return.

March 5, 1999

Dear:

Your letter dated February 1, 1999, to Danny Young has been referred to me for response. I have reviewed that letter and your letters of December 8, 1998, and January 10, 1999, and conclude that your argument is:

- You are a nonresident alien.
- As a nonresident alien, you are subject to federal income tax only on your income that is from sources within the United States.
- You have no income from sources within the United States.
- Accordingly, you had no "adjusted gross income" for federal income tax purposes and therefore had no obligation file federal income tax returns.
- Because you had no federal adjusted gross income, you had no "base income" for Illinois Income Tax purposes.
- You therefore had no Illinois income tax liability and no obligation to file Illinois Income Tax Returns.

I concluded that you believe you are a "nonresident alien" because most of your correspondence deals with Section 861 of the Internal Revenue Code. The provisions of that section are relevant to you only if you are a nonresident alien taxed under Section 871 of the Internal Revenue Code or if you are subject to tax on income by both the United States and by a foreign country, and are therefore entitled to a foreign tax credit under Section 901 of the Internal Revenue Code. The latter cannot be the case, because you are asserting that you are not subject to income tax by the United States. That leaves only the assertion that you are a nonresident alien.

Under Section 7701(b) of the Internal Revenue Code, any nonresident who is present in the United States for 183 days per year for 3 successive years is a resident alien. According to the documents we have received from the Internal Revenue Service, you lived in xxxxxxxx, Illinois during the years 1992 through 1994, and your return address indicates you still live there. Accordingly, I would conclude that you are not a nonresident alien.

If you are not a nonresident alien, the definition of "gross income" in Section 872(a) does not apply to you. Instead, the relevant definition of "gross income" is in Section 61 of the Internal Revenue Code, which states "gross income means **all** income from **whatever** source derived." (Emphasis added.) Under this section, your arguments concerning source are irrelevant, because gross income includes income from all income from all sources. Accordingly, I would conclude that the IRS properly computed your gross income for the years 1992 through 1994 in the Form 4549A Report of Income Tax Examination Changes.

Section 62(a) of the Internal Revenue Code defines "adjusted gross income" to mean "gross income" minus certain deductions. Nowhere in your letters do you claim the IRS failed to allow you any deductions properly allowable in the computation of adjusted gross income. Accordingly, I conclude that the IRS properly determined your adjusted gross income for the years 1992 through 1994. It would also appear that you had an obligation to file a federal income tax return for those years.

As you state in your letters, under Section 203(a)(1) of the Illinois Income Tax, the computation of your net income begins with your federal adjusted gross income, which is then adjusted by various additions and subtractions under Section 203(a)(2) and allocated or apportioned to Illinois under Part 3 of the Illinois Income Tax Act and reduced by any exemptions under Section 204 of the Illinois Income Tax Act. See Section 202 of the Illinois Income Tax Act.

Section 403(b) of the Illinois Income Tax Act provides:

A final determination pursuant to the Internal Revenue Code adjusting any item or items of income, deduction or exclusion for any taxable year shall be correct for purposes of this Act to the extent such item or items enter into the determination of base income.

Under this statute, the determination made by the IRS for the years 1992 through 1994 regarding your adjusted gross income is correct. You have not asserted that you are entitled to any adjustments under Section 203(a)(2) of the Illinois Income Tax Act or that you are entitled to allocate or apportion any of your income to a state other than Illinois. I must therefore conclude that your Illinois net income for each of the years 1992 through 1994 is equal to your federal adjusted gross income for the applicable year, minus your Illinois exemptions.

Because in each of the years 1992 through 1994, you had Illinois net income, you were liable for Illinois Income Tax. Also, as noted above, it appears that you were required to file federal income tax returns for those years. As you noted in your letters, Section 502(a) of the Illinois Income Tax Act therefore requires you to file returns for those years.

I have therefore advised Danny Young that he is correct in having a Notice of Deficiency issued to you.

Sincerely,

Paul S. Caselton
Associate Chief Counsel -- Income Tax